RECORD OF PROCEEDINGS

PHYSICAL DISABILITY BOARD OF REVIEW

NAME: xxxxxxxxxxxxxxxxxx BRANCH OF SERVICE: MARINE CORPS

CASE NUMBER: PD110663 DATE OF PLACEMENT ON TDRL: 20051015

BOARD DATE: 20120620 DATE OF PERMANENT SEPARATION: 20080130

SUMMARY OF CASE: Data extracted from the available evidence of record reflects that this covered individual (CI) was an active duty SGT/E-5 (3531, Motor Vehicle Operator), medically separated for primary hypercoagulable state, on lifelong anticoagulation*.* The CI had onset of symptoms of shortness of breath and right calf swelling that led to a diagnosis of pulmonary embolism and deep vein thrombosis (DVT). He was treated with anticoagulation, but had repeated pulmonary embolism with abnormal lung ventilation perfusion scan (V/Q scan) and pulmonary hypertension. The pulmonary embolus was removed surgically (pulmonary thrombo-endarterectomy) and a filter was placed to prevent further emboli. A hypercoagulable workup demonstrated an underlying Lupus anticoagulant and the CI was continued on anti-coagulants. Although the pulmonary scans and pulmonary hypertension were improving, the CI had continued shortness of breath and had a diagnosis of chronic thromboembolic disease. Chronic venous stasis due to thrombophlebitis (right > left), and primary hypercoagulable state secondary to Lupus anticoagulant. The CI was unable to meet the physical requirements of his Military Occupational Specialty (MOS) or satisfy physical fitness standards and he was referred for a Medical Evaluation Board (MEB). The Physical Evaluation Board (PEB) adjudicated primary hypercoagulable state, on lifelong anticoagulation condition as unfitting (with contributing category II chronic thromboembolic disease and venous stasis) and the CI was rated at 40% and placed on the Temporary Disability Retired List (TDRL). The PEB worksheet (JDETS) referenced application of the SECNAVINST (1850.4E) for rating and TDRL. Following TDRL re-evaluation, in September 2007, the PEB adjudicated the primary hypercoagulable state, on lifelong anticoagulation condition at 10% with the same category II diagnoses as the initial PEB, with likely application of SECNAVINST 1850.4E and/or DoDI 1332.39. The CI appealed to the Formal PEB (FPEB) which confirmed the PEB 10% adjudication. The CI did not seek a petition for relief, and was medically separated with a 10% combined disability rating.

CI CONTENTION: “I continue to have the condition that I was the reason of my separation, I was found unfit to continue in the Marine Corps and was taken off of Temporary Disability Retirement List (TDRL) and discharged. I was taken off of TDRL due to my condition remaining the same. If my condition was found to be the same I should have been placed on Permanent Disabled Retirement List (PDRL).”

SCOPE OF REVIEW: The Board wishes to clarify that the scope of its review as defined in DoDI 6040.44, Enclosure 3, paragraph 5.e.(2) is limited to those conditions which were determined by the PEB to be specifically unfitting for continued military service; or, when requested by the CI, those condition(s) “identified but not determined to be unfitting by the PEB.” The ratings for unfitting conditions will be reviewed in all cases. The FPEB conditions of primary hypercoagulable state, on lifelong anticoagulation; and category II diagnoses of chronic venous stasis due to thrombophlebitis of the lower extremities (R>L), and chronic thromboembolic disease status post pulmonary thromboendarterectomy, are considered as requested for consideration and meet the criteria prescribed in DoDI 6040.44 for Board purview; and, are addressed below. Any conditions or contention not requested in this application, or otherwise outside the Board’s defined scope of review, remain eligible for future consideration by the Board for Correction of Naval Records (BCNR).

RATING COMPARISON:

|  |  |
| --- | --- |
| **Service FPEB – Dated 20080130** | **VA (2 Mo. Pre-TDRL) – All Effective Date 20051015** |
| **Condition** | **Code** | **Rating** | **Condition** | **Code** | **Rating** | **Exam** |
| **On TDRL – 20051014** | **TDRL** | **Sep.** |
| Primary hypercoagulable state, on lifelong anticoagulation | 7199-7121 | 40% | 10% | Chronic thromboembolic disease with primary hypercoagulable state secondary to lupus anticoagulant s/p thromboendarterectomy | 6817 | 60% | 20050822 |
| Chronic thromboembolic disease s/p pulmonary thromboendarterectomy | Category II |
| Chronic venous stasis due to thrombophlebitis of the lower extremities (R>L) | Category II | Right lower extremity thrombophlebitis | 7121 | 10%\* | 20050822 |
| Left lower extremity thrombophlebitis | 7121 | 10%\* | 20050822 |
| ↓No Additional MEB/PEB Entries↓ | Chest Scar … s/p (surgery) | 7802 | 0% | 20050822 |
| Left Knee … PFS … | 5260 | 0% |  |
| 0% x 2/Not Service-Connected x 2 |
| **Combined: 40% / 10%** | **Combined: 70%\*** |

\*Added Angina/Cardiomyopathy, 7099-7020 at 30%; fatty liver, 7345 at 10%; tinnitus, 6260 at 10%; and increased Right & Left legs (scars, post-angioplasty) to 40% each; effective 20100617 (combined 90%)

ANALYSIS SUMMARY: The CI’s opinion that he had not improved over the course of his TDRL period was considered in the Board’s deliberations. The Board takes the position that subjective improvement or worsening during the period of TDRL should not influence its coding and rating recommendation at the time of permanent separation. The Board’s relevant recommendations are assigned in assessment of the permanent separation and rating determination, and the TDRL rating assignment is not considered a benchmark. The Board recognizes that in some cases, PEB’s across the services sometimes apply an overly generous initial rating in order to meet the DoD requirement of 30% disability for placement on TDRL. This is in the member’s best interest at the time and does not imply a final lower rating is unfair, even if perceived as incongruent with subjective severity from one rating to the next. Thus, the sole basis for the Board’s permanent recommendation is the optimal VASRD rating for disability at the time the CI is permanently separated. The Board utilizes Department of Veterans’ Affairs (DVA) evidence proximal to key rating timeframes in arriving at its recommendations; which in this case was the period proximate to the CI’s placement on TDRL in November 2005. Since the DVA examination and rating at the time of TDRL placement is within the 12-month window specified in DoDI 6040.44 regarding Board consideration of DVA or non-service evidence, and was closer to the CI’s TDRL entry than the service evaluation, heavy probative value can be assigned to it for TDRL entry. There was no DVA evaluation proximate to the CI’s permanent separation date.

The FBEB “rationale for PEB findings” dated 30 January 2008 provides a comprehensive history and analysis of the facts of the case and references SECNAVINST 1850.4E. The additional rating criteria of DoDI 1332.39 regarding hypercoagulable states was also likely applied, as the FPEB coded the CI’s condition under the DoDI recommended 7199-7121 analogous coding (post-phlebitic syndrome of any etiology) rather than the SECNAVINST recommended 7199-7120 analogous coding (varicose veins).

PEB Diagnoses. The PEB diagnoses of primary hypercoagulable state, on lifelong anticoagulation condition with associated chronic venous stasis due to thrombophlebitis of the lower extremities (R>L), and chronic thromboembolic disease status post pulmonary thromboendarterectomy, are intertwined and are therefore described and considered together.

At the initial MEB exam (prior to TDRL), the CI reported the history noted in the above summary of case with salient points or recurrent pulmonary embolism despite anticoagulation, surgical removal of pulmonary embolus with placement of a filter was placed to prevent further emboli, post-surgical resolution of pulmonary hypertension; moderate improvement of shortness of breath on exertion; and slight symptoms of lower leg thrombophlebitis with venous stasis. The CI had an underlying Lupus anticoagulant and requirement for lifelong anticoagulant therapy. The MEB physical exam noted complaints of mild shortness of breath after 1 to 2 miles of walking, and episodic right leg swelling. Exam indicated a normal lung exam and pitting edema of the right lower leg (3 cm larger circumference than the left). The CI had lupus anticoagulant with otherwise negative hypercoagulable workup. Lung ventilation perfusion scan (V/Q) of April 2005 indicated a small mismatch in the right lower lung. Pulmonary function testing (PFTs) indicated normal flows and volumes with a normal diffusion capacity of 90% predicted. A desaturation study of 10 minutes/3 miles indicated no desaturation.

At the VA Compensation and Pension (C&P) exam prior to TDRL-entry, the CI reported a similar history as the MEB with no shortness of breath. Right leg swelling was decreased to 1 cm with mild tender varicose veins without dermatitis or ulceration. The diagnosis was “primary hypercoagulable state attributed to lupus anticoagulant resulting in right deep venous thrombosis in April 2004 and pulmonary embolus and subsequent multiple pulmonary emboli in September 2004 subsequently treated with Greenfield filter and pulmonary thromboembolectomy in January 2005. In addition, echocardiogram in October 2004 demonstrated pulmonary hypertension, which has resolved on repeat echocardiogram of April 2005. Desaturation studies obtained in May 2005 demonstrate no significant desaturation with exercise. He is a candidate for life-long Coumadin treatment and has been advised of the benefits of wearing compression stockings. His exam today is negative for venous hypertension secondary to deep venous thrombosis.” The VA rated this exam as charted above (60% for pulmonary condition and 10% for each lower extremity).

At the TDRL re-evaluation*,* the CI was considered stable on blood thinner (Coumadin) with no chest pain or shortness of breath, but inability to perform strenuous exercise. Exam indicated clear lungs, 98% O2 saturation on room air (normal) and edema in the right leg. There was no repeat V/Q scan or cardiac ECHO in evidence. The final diagnoses were “1. CHRONIC THROMBOEMBOLIC DISEASE; STATUS POST PULMONARY THROMBO-ENDARTERECTOMY; 2. CHRONIC VENOSTASIS DUE TO THROMBOPHLEBITIS OF THE LOWER EXTREMITY, RIGHT LOWER EXTREMITY WORSE THAN THE LEFT; and, 3. PRIMARY HYPERCOAGULABLE STATE SECONDARY TO LUPUS ANTICOAGULANT.

The 2-year remote from TDRL-separation VA exams in 2010/2011 indicated repeated leg thromboses with skin changes (bilateral) and a cardiomyopathy attributed to the CI’s pulmonary condition, was considered post-separation worsening and too remote from the rating period for rating at separation.

The Board directs attention to its rating recommendation based on the above evidence and the FPEB rationale and findings. The FPEB indicated their only finding of unfit was for the primary hypercoagulable state (and chronic anticoagulant requirement) and considered the chronic thromboembolic disease status post thromboendarterectomy as specifically not being separately unfitting. The right leg chronic venous stasis was also considered a category II (related to category I) condition. The FPEB appeared to consider the CI’s pulmonary condition asymptomatic and therefore not unfitting.

The Board discussed whether the category II conditions were actually separable from the primary unfitting condition of primary hypercoagulable state (and chronic anticoagulant requirement). The history and case-specific disability indicated in this case was not equivalent to most cases where an underlying hypercoagulable state is found following a single or mild event that otherwise fully resolves. The CI’s recurrent pulmonary emboli, surgical removal of a large pulmonary embolus, and inferior vena cava surgery with placement (requirement for) a Greenfield Filter would have independently required lifelong anticoagulation therapy. Of note, the VA exams were very closely aligned with the service exams and there were no significant differences in findings with regard to ratable criteria for any of the analogous coding options: 7199-7121, post-phlebitic syndrome of any etiology; 7199-7120, varicose veins; or, 6899-6817 pulmonary vascular disease. There was no evidence that the left leg rose to the level of being unfitting. The right leg limitations of activity would almost certainly prohibited return to duty as a Motor Vehicle Operator. The CI’s intermittent right leg symptoms and physical findings were closer to the 10% criteria of “intermittent edema of extremity or aching and fatigue in leg after prolonged standing or walking, with symptoms relieved by elevation of extremity or compression hosiery” than the 0% criteria of “asymptomatic palpable or visible varicose veins.” There was insufficient documentation (no preponderance of evidence) of left lower extremity pathology, symptoms or disability for a determination of an unfit left lower extremity. The Board considered that independent of the lupus hypercoagulable state, due to the surgical placement of the inferior vena cava filter and recurrent/chronic pulmonary emboli, the CI would have been required to be on lifelong anticoagulation therapy, which would have been unfitting.

After due deliberation, considering all of the evidence and mindful of VASRD §4.3 (reasonable doubt) and the preponderance of the evidence, the Board recommends the CI’s intertwined primary hypercoagulable state (lifelong anticoagulation) associated with chronic thromboembolic disease status post pulmonary thromboendarterectomy with chronic right lower extremity venous stasis, be found unfitting for both primary hypercoagulable state (lifelong anticoagulation) associated with chronic thromboembolic disease status post pulmonary thromboendarterectomy coded 6899-6817 at 60% IAW VASRD §4.97, and chronic right lower extremity venous stasis coded 7199-7121 at 10% IAW VASRD §4.104.

BOARD FINDINGS: IAW DoDI 6040.44, provisions of DoD or Military Department regulations or guidelines relied upon by the PEB will not be considered by the Board to the extent they were inconsistent with the VASRD in effect at the time of the adjudication. As discussed above, PEB reliance on SECNAVINST 1850.4E and/or DoDI 1332.39 for rating was likely operant in this case and the condition was adjudicated independently of that instruction by the Board. In the matter of the primary hypercoagulable state with chronic thromboembolic disease and chronic venous stasis condition, the Board unanimously recommends a finding of unfit for the right lower extremity (not unfitting left lower extremity) and disability ratings of primary hypercoagulable state (lifelong anticoagulation) associated with chronic thromboembolic disease status post pulmonary thromboendarterectomy and Greenfield filter placement coded 6899-6817 at 60% IAW VASRD §4.97, and chronic right lower extremity venous stasis coded 7199-7121 at 10% IAW VASRD §4.104 for both entry into TDRL and for permanent separation rating. There were no other conditions within the Board’s scope of review for consideration.

RECOMMENDATION: The Board recommends that the CI’s prior determination be modified as follows; and, that the discharge with severance pay be recharacterized to reflect permanent disability retirement, effective as of the date of his prior medical separation:

|  |  |  |
| --- | --- | --- |
| **UNFITTING CONDITION** | **VASRD CODE** | **RATING** |
| **TDRL** | **PERMANENT** |
| Primary hypercoagulable state (lifelong anticoagulation) associated with chronic thromboembolic disease s/p pulmonary thromboendarterectomy and Greenfield filter placement | 6899-6817 | 60% | 60% |
| Chronic right lower extremity venous stasis | 7199-7121 | 10% | 10% |
| **COMBINED** | **60%** | **60%** |

The following documentary evidence was considered:

Exhibit A. DD Form 294, dated 20110714, w/atchs

Exhibit B. Service Treatment Record

Exhibit C. Department of Veterans’ Affairs Treatment Record

 President

 Physical Disability Board of Review

MEMORANDUM FOR DEPUTY COMMANDANT, MANPOWER & RESERVE AFFAIRS

 COMMANDER, NAVY PERSONNEL COMMAND

Subj: PHYSICAL DISABILITY BOARD OF REVIEW (PDBR) RECOMMENDATIONS

Ref: (a) DoDI 6040.44

 (b) PDBR ltr dtd

 (c) PDBR ltr dtd

 (d) PDBR ltr dtd

 (d) PDBR ltr dtd

1. Pursuant to reference (a) I approve the recommendations of the Physical Disability Board of Review set forth in references (b) through (d).

2. The official records of the following individuals are to be corrected to reflect the stated disposition:

 a. former USN: Placement on the Permanent Disability Retired List with a 30% disability rating effective 19 May 2004.

b. former USMC: Placement on the Permanent Disability Retired List with a 30% disability rating effective 15 April 2006.

 c. former USN: Disability separation with entitlement to disability severance pay with a rating of 20% (increased from 10%) effective 3 February 2005.

d. former USMC: Placement on the Permanent Disability Retired List with a 60% disability rating effective 30 January 2008.

3. Please ensure all necessary actions are taken, included the recoupment of disability severance pay if warranted, to implement these decisions and that subject members are notified once those actions are completed.

 Assistant General Counsel

 (Manpower & Reserve Affairs)